

HEALTHCARE

Nursing Homes to be assessed for regulatory compliance in light of COVID-19 outbreak

27 April 2020

On 21 April 2020, the Health Quality and Information Authority (“HIQA”) published new guidance for nursing homes entitled [“Regulatory assessment framework of the preparedness of designated centres for older people for a COVID-19 outbreak”](#) (click for link to the framework).

Under this new framework, registered providers must complete a self-assessment form and will be assessed by HIQA to verify their compliance with their obligations under the Health Act 2007 (as amended) (“the Act”) and associated regulations. HIQA will commence on-site quality assessment framework from 29 April 2020.

Who does the framework apply to?

The framework applies to all nursing homes, both public and private, that do not have any COVID-19 cases.

What is the purpose of the framework?

The purpose is to ensure that nursing

homes are prepared to manage a potential COVID-19 outbreak.

What needs to be done before a quality assessment framework ?

Registered providers must complete a self-assessment prior to a quality assessment framework. There is no requirement to submit the self-assessment to HIQA but it must be completed and available on the day of the quality assessment framework. Registered providers should have documents which support their assessment available for a quality assessment framework and should ensure that staff are available to be interviewed during the quality assessment framework.

How to complete the self-assessment

Registered providers will be asked to answer ‘Yes’ or ‘No’ to a series of questions relevant to their preparedness for a COVID-19 outbreak under specific regulations contained in the Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (as amended) (“the Regulations”). Registered providers will then be asked to assess their preparedness for COVID-19 against the Regulations using the judgement descriptors set out in the table below. Inspectors will also use these judgement descriptors when they have completed their quality assessment framework.

COMPLIANT	SUBSTANTIALLY COMPLIANT	NON-COMPLIANT
This means that the registered provider has taken the necessary steps to prepare for a potential COVID-19 outbreak.	This means that the registered provider has most of the elements of an effective contingency plan but some action is required.	This means that the registered provider has not taken the necessary steps to prepare for a potential COVID-19 outbreak. In the absence of this preparation and contingency plan, residents are at risk. Urgent action is required by the provider.

The assessment form provides no scope for a nursing home to provide background or further information or an explanation as to why a nursing home might consider itself to be non-compliant or substantially non-compliant. This may mean that an inspector has no context to understand the reasons why

a nursing home may be non-compliant. For this reason, we recommend that when completing the form, nursing homes should submit additional relevant information in whatever form it considers appropriate, to ensure inspectors are aware of the context and reasons for potential non-compliance.

What questions will be asked in the self-assessment?

The self-assessment framework is divided into 2 sections:

1. Capacity and Capability
2. Quality and Safety

1. Capacity and Capability

This section focuses on the overall delivery of the nursing home's service and how prepared the registered provider is for a COVID-19 outbreak. Registered providers will be asked to assess their compliance with certain regulations including Regulations 15 & 16 relating to staffing and Regulation 23 relating to governance and management. Questions include whether the registered provider has a plan in place to ensure continuity of care to residents in the event of a significant shortfall of staff and whether staff have received up to date training specific to COVID-19. Questions relating to governance and management include whether the registered provider has access to viral testing and whether adequate resources such as PPE are available in the event of an outbreak.

2. Quality and Safety

This section focuses on ensuring the care and welfare of residents. Registered providers will be asked to assess their compliance with certain regulations including Regulation 9 relating to residents' rights and Regulations 26 & 27 relating to risk management and infection control. Questions include whether residents have occupational and recreational opportunities, whether the risk management policy has been updated and whether staff have sufficient PPE.

What happens during a quality assessment framework ?

An inspector may interview the registered provider or their representative, the

person in charge of the home and staff members. An inspector can observe the home and review any documents supporting the registered provider's self-assessment. An inspector will not enter areas of the home occupied by residents. The duration of the quality assessment framework will depend on the registered provider's preparedness plan and the detail in the self-assessment.

What can happen in the event of non-compliance?

The framework provides that an inspector will issue a compliance plan to the registered provider if they find that further action is required to ensure compliance.

Given the significant challenges facing nursing homes as a result of the COVID-19 outbreak, a registered provider could find itself in a situation where it is not able to implement a compliance plan or where they believe that they can no longer provide the appropriate level of care to its residents. For example, for reasons outside the control of a nursing home (due to isolation or illness amongst staff members), staffing levels in a nursing home could be reduced to such an extent that residents cannot be cared for in a safe manner consistent with the Act and the Regulations.

Where this becomes very serious and the nursing home simply cannot cope, there are a number of provisions available to address such a situation in the Act, which include the Health Service Executive ("the HSE") taking over the nursing home. The relevant sections provide:

1. In the event of non-compliance with the Act and the Regulations, the Chief Inspector of HIQA has a discretion to cancel or to attach conditions to the registration of a nursing home under Section 51 of the Act. This discretion will not be automatically exercised by the Chief Inspector on a finding of non-compliance.
2. Section 59 allows the Chief Inspector to make an application to the District Court for an order cancelling registration of a nursing home if she believes that there is a risk to the life or a serious risk to the health or welfare of the persons living in a nursing home. In the event that a nursing home believes they cannot safely provide a service to residents or that there is a risk to the health and life of residents, they can and should consider giving express notice of this fact to HIQA.
3. Where cancellation takes place, the HSE has a statutory obligation, as soon as practicable after being notified of the cancellation decision, to make alternative arrangements for those who are resident in the nursing home. In addition, the HSE must, pending these alternative arrangements, either with the consent of the registered provider or by order of the District Court, take charge of the home and may carry on the business of the home as if it were the registered provider.

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